

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 26 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DAMIAN MARTINEZ-REYES,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-72401

Agency No. A095-282-086

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 17, 2008^{**}

Before: GOODWIN, WALLACE, and TROTT, Circuit Judges.

Damian Martinez-Reyes, a native and citizen of Mexico, petitions for review of a decision of the Board of Immigration Appeals denying as untimely filed and

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

numerically barred petitioner's second motion to reopen the underlying denial of petitioner's application for cancellation of removal based on his failure to establish the requisite hardship to petitioner's qualifying relatives.

Petitioner concedes that the motion was untimely filed, but contends that the BIA should have *sua sponte* reopened proceedings. This court lacks jurisdiction to review the BIA's decision not to reopen proceedings *sua sponte*. See *Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). In addition, the BIA did not abuse its discretion in concluding under 8 C.F.R. § 1003.2(c)(2) that petitioner's second motion to reopen was numerically barred.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.